

MINUTES
Judicial Performance Evaluation Program
Improvement of the Existing System for Evaluating Trial Judges Subcommittee
Meeting of April 29, 2009

The fourth meeting of the Subcommittee was held at the Middlesex Judicial District on April 29, 2009 at 2:15 p.m.

Members in attendance:

Hon. Robert B. Shapiro (Co-Chair), Attorney Louis R. Pepe (Co-chair), Attorney Faith Arkin, Hon. Thomas J. Corradino, Attorney James O. Craven, Attorney Ronald S. Gold, Attorney Kevin T. Kane, Hon. Christine E. Keller, and Attorney Richard Silver
Also Attending: Hon. Alexandra D. DiPentima

Members absent: Attorney David R. Jimenez, Attorney Marc J. Kurzman, Hon. Antonio C. Robaina, Sen. Andrew W. Roraback

Judge Shapiro called the meeting to order at 2:20 P.M.

Agenda Item I. Approval of Minutes of April 9, 2009 Meeting

Minutes of April 9, 2009 were approved.

Agenda Item II. Report On Meeting of Subcommittee Chairpersons

Judge Shapiro informed the subcommittee members of the reports presented by the subcommittee co-chairs at the meeting of co-chairs held on April 14, 2009. He noted that there were opposing views in the areas of staff and Presiding Judges being involved in the evaluation process.

Judge Shapiro also informed the members that there was a memo from Judge DiPentima and Judge Shortall stating that a written report from the subcommittees must be completed by May 26, 2009. The report is to include the recommendations of the subcommittee; whether a consensus was reached on those recommendations; and if there was no consensus, the report is to include the votes. A statement of the rationale is to be included for each recommendation.

As the subcommittee has been working from a basic Agenda for its meetings, this meeting will address the areas which remain outstanding.

Agenda Item III. B. 3. Addition of Comments Section to Attorney Questionnaire

The subcommittee members discussed the various issues associated with the addition of a comments section, including the ways in which comments could be used or whether the respondent could be identified. It was noted that there is a misconception that all comments are harmful; in previous questionnaires comments were structured to request “what is commendable” and “room for improvement”. If structured in this way, the comments section would have educational value and is less likely to be abused. The purpose of the evaluations is twofold – for improvement and for reappointment. The negative comments will appear in blogs; it was further noted that it would be better to have comments addressed early on; then at reappointment a judge can report how negative comments were addressed and how any problem was alleviated.

Attorney Pepe made a motion: “That the present questionnaire be amended to include a comments section which asks: 1) What, if anything, did the Judge do that you found particularly commendable or admirable? 2) What, if anything, did the Judge do that you found could be improved?” Motion seconded.

A further recommendation is that the Judicial Branch authorize using the comments for education and mentoring of judges and that the appropriate authority not wait for the accumulation of 25 questionnaires.

Vote: In Favor – Atty. Pepe, Atty. Arkin, Judge Corradino, Atty. Craven, Atty. Gold, Atty. Kane, Atty. Silver

Opposed – Judge Shapiro, Judge Keller

Agenda Item III.A. 4. and 5. Additional Evaluators – Litigants, Pro Se Litigants

After discussion about whether litigants and pro se litigants should be included in the evaluation process, there was a consensus that they not be included.

Agenda Item III.B.2. Information About Respondent

The subcommittee members discussed the concerns of lawyers that questions regarding the respondent’s number of years in practice, whether the respondent previously evaluated this judge, and whether the outcome was favorable or unfavorable could increase the likelihood that the respondent could be identified. It was noted that the information is entered as data and the form, itself, is destroyed. Some members expressed concern that enough information about the evaluation process is not communicated to respondents to alleviate the fears about being identified. After further discussion, the members reached a consensus that these questions should also be referred to an expert for statistical validity – whether the questionnaire (1) comports with best practices for evaluating judges; and (2) provides information to assist the judge in improving his/her performance. Also, the expert should be asked whether knowing the outcome of the case makes the survey more reliable.

Agenda Item D Distribution of Questionnaires

1. Uniform Distribution Rules in All J.D.'s

The members questioned whether the distribution rules were the same in all Judicial Districts. Attorney Arkin explained the rules and guidelines regarding distribution of the forms from the clerks' offices. The possibility of having an electronic means of distribution was discussed. After a brief discussion, the members reached a consensus that an electronic form should be considered subject to being able to protect anonymity and control of multiple responses from a single respondent.

2. After Hearings of Less than One Hour?

Discussion ensued whether an attorney can evaluate a judge in less than one hour, noting that there are differences in courts and types of proceedings, and also, whether the number of responses would inundate the system. Atty. Arkin noted that there are additional criteria in determining whether or not a questionnaire is given to an attorney after a hearing. Some members were of the opinion that the amount of time could be changed without changing the criteria.

Attorney Silver made a motion: "To change the time period to 30 minutes rather than 1 hour." Motion seconded.

Vote: In Favor – Atty. Pepe, Judge Corradino, Atty. Gold, Atty. Silver, Atty. Kane and Atty. Craven

Opposed: Judge Shapiro, Judge Keller, Atty. Arkin

3. After Settlement Conferences? 4. After Mediation? 5. On Complex Litigation Docket and 6. Other

Discussion revolved around the scheduling and timing of pretrials by the different courts, whether they are scheduled ahead of time, or on an as needed basis. It was noted that many times a judge does not have time to review the case before a pretrial. The mediation sessions are different as they are scheduled in advance. The pretrials and settlement conferences are a large part of the process in civil matters. An appropriate questionnaire would have to be developed to evaluate a judge and one form may not be appropriate for settlement conferences and mediations. There are issues regarding length of time for the pretrial or settlement conference and questions were raised as to how these would be tracked. After further discussion regarding process and development of the form(s), Attorney Silver made a motion: "That Settlement Conferences and Mediations should be included in the Judicial Performance Evaluation Process utilizing appropriate questionnaires employed in an appropriate administrative process."

Vote: In Favor – Atty. Pepe, Atty. Arkin, Judge Corradino, Atty. Craven, Atty. Gold, Atty. Kane, Atty. Silver

Opposed – Judge Shapiro, Judge Keller

Discussion ensued regarding evaluating judges who are assigned to complex litigation. Judges in complex manage the cases and some members expressed an opinion that they should be evaluated on overall management. The issue was raised as to whether the evaluation form is appropriate and whether complex litigation judges should be evaluated the same as the judges doing settlement conferences and mediations.

Atty. Silver made motion: "There should be an evaluation of complex litigation judges with the understanding that there has to be further investigation as to the type and method of evaluation." Motion seconded.

Vote: In Favor – Atty. Gold, Atty. Silver

Opposed - Judge Shapiro, Judge Keller, Atty. Arkin, Atty. Pepe, Atty. Craven, Atty. Kane

Abstained – Judge Corradino

E. Anonymity Issue

Members discussed whether the respondent could be identified by their responses on the evaluations. The questions on the current questionnaire about how long an attorney has been in practice and the nature of practice creates doubt among some members of the bar that the questionnaire is anonymous. Since defects with the process cannot be identified, it then becomes an educational issue. Attorney Arkin explained that the form is opened, the judge's name replaced with a code and the information entered as data. Then the forms are destroyed. The judge never sees the form, itself, and a minimum of 25 questionnaires must be received before a report is generated. The report is a compilation of the data; there isn't a connection between the response and the number of years in practice. The members reached a consensus that there needs to be more publication of the evaluation process.

Agenda Item V. Next Meeting

Next Meeting is Wednesday, May 6, 2009 at 2:15 PM in Room 607L, Superior Court, One Court Street, Middletown, CT.

Meeting adjourned at 5:00 PM.